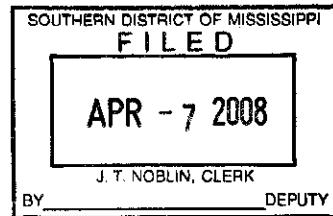


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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
(JACKSON DIVISION)

TOMAS MADRO BANDARIES

Plaintiff,

V.

**Pfizer Inc., Pharmacia Corporation, and G.D. Searle, LLC,**  
**Defendants.**

Case No. 3:08cv222 TSL - JCS  
**CIVIL COMPLAINT**

**JURY TRIAL DEMANDED**

Tomas Madro Bandaries, Plaintiff, by and through counsel and pursuant to applicable law, brings this action against Defendants PFIZER INC., PHARMACIA CORPORATION, and G.D. SEARLE, LLC (hereafter collectively “Defendants”) and alleges as follows:

## I. PARTIES

1. This is an action for damages arising from Defendants' design, manufacture, sale, testing, marketing, advertising, promotion, and/or distribution of the unsafe medication Valdecoxib, trade name BEXTRA® ("BEXTRA").

1  
2. Plaintiff is an adult resident citizen of the State of Mississippi (Lincoln  
3 County) since May 28, 2007. At the time of his Bextra ingestion and injury he was an adult  
resident citizen of the State of Arizona.  
4

5  
3. Defendant Pfizer Inc. ("Pfizer") is a Delaware corporation with its  
6 principal place of business in New York, New York. In 2003, Pfizer acquired Pharmacia  
7 Corporation for nearly \$60 billion. At all relevant times Pfizer and/or its predecessors in interest  
8 were engaged in the business of designing, testing, manufacturing, packaging, marketing,  
9 distributing, promoting, and selling the drug Valdecoxib, under the trade name BEXTRA in  
Illinois, Arizona, Mississippi, California and nationwide and in Mexico.  
10

11  
4. Defendant G. D. Searle, LLC, formerly known as G. D. Searle & Co.  
12 ("Searle") is a Delaware corporation with its principal place of business in Illinois. At all relevant  
13 times, Searle has been engaged in the business of marketing and selling BEXTRA in Illinois,  
14 Arizona, Mississippi, California and nationwide and in Mexico. Searle is a subsidiary of Pfizer,  
15 acting as its agent and alter ego in all matters alleged within this Complaint.  
16

17  
5. Defendant Pharmacia Corporation ("Pharmacia ") is a Delaware  
18 corporation with its principal place of business in New Jersey. At all relevant times, Pharmacia,  
19 and its predecessors in interest have been engaged in the business of designing, testing,  
manufacturing, packaging, marketing, distributing, promoting, and selling BEXTRA Illinois,  
Arizona, Mississippi, California and nationwide and in Mexico.  
20

## II. JURISDICTION AND VENUE

21  
6. This is an action for damages, which exceeds seventy-five thousand dollars  
22 (\$75,000.00).  
23

24  
7. There is complete diversity of citizenship between the Plaintiff and  
Defendants. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.A.  
25 § 1332 (diversity jurisdiction) because the amount in controversy exceeds \$75,000.00, and  
26 because there is complete diversity of citizenship between Plaintiff and Defendants.  
27  
28

1           8.       Venue is proper in this United States Judicial District pursuant to  
2 28 U.S.C.A. § 1391. Defendants marketed, advertised and distributed the dangerous product in  
3 this district, thereby receiving substantial financial benefit and profits from the dangerous product  
4 in this district, and reside in this district under 28 U.S.C.A. § 1391(c), such that venue is proper.  
5

6           9.       At all relevant times herein, Defendants were in the business of designing,  
7 manufacturing, marketing, developing, testing, labeling, promoting, distributing, warranting and  
8 selling their product, BEXTRA. Defendants at all times relevant hereto designed, developed,  
9 manufactured, promoted, marketed, distributed, tested, warranted and sold in interstate commerce  
10 (including Mississippi) the aforementioned prescription drug. Defendants do substantial business  
11 in the State of Mississippi and within this Federal Judicial District, advertise in this district,  
12 receive substantial compensation and profits from sales of BEXTRA in this District, and made  
13 material omissions and misrepresentations and breaches of warranties in this District so as to  
14 subject them to *in personam* jurisdiction in this District. In engaging in the conduct alleged  
15 herein each defendant acted as the agent for each of the other defendants, or those defendant's  
16 predecessors in interest.

17           **III. FACTUAL BACKGROUND**

18           **A. Facts Regarding Plaintiff**

19           10.      Tomas Madro Bandaries was prescribed, and began taking, BEXTRA  
20 20mg twice per day beginning in January 2003 as prescribed by Dr. Belinda Uhall in Tucson,  
21 Arizona. His initial Bextra purchases were from Walgreen's pharmacy at 6767 E. Broadway  
22 Boulevard in Tucson. However, his insurance failed to cover the cost, so after December 8, 2003  
23 he purchased his Bextra thirty miles away in Mexico where it was much less expensive.

24           11.      Unaware of the risks presented by BEXTRA, or that BEXTRA was the  
25 cause of injuries, Plaintiff continued to take BEXTRA until he stopped in early 2007 after  
26 learning of Bextra's April 7, 2005 market withdrawal by reading about it in a medical journal at a  
27 doctor's office.  
28

1           12. Plaintiff suffered a heart attack on February 5, 2007 as a direct result of  
2 Defendants' negligent and otherwise culpable acts, omissions, and misrepresentations leading to  
3 Plaintiff's ingestion of BEXTRA.

4           13. Plaintiff used BEXTRA in a proper and reasonably foreseeable manner and  
5 used it in a condition that was substantially the same as the condition in which it was  
6 manufactured and sold.

7           14. Plaintiff would not have used BEXTRA had Defendants properly disclosed  
8 the risks associated with the drug.

9           **B. Facts Regarding Bextra and Bextra's Market Launch**

10          15. Bextra is one of a class of pain medications called non-steroidal anti-  
11 inflammatory drugs ("NSAIDs"). Aspirin, naproxen (trade name Aleve), and ibuprofen (trade  
12 name Advil) are examples of well-known NSAIDs.

13          16. NSAIDs reduce pain by blocking the body's production of pain  
14 transmission enzymes called cyclo-oxygenase or "COX." There are two forms of COX  
15 enzymes—COX-1 and COX-2. Aspirin, naproxen and ibuprofen all act by blocking COX-1 and  
16 COX-2 enzymes.

17          17. In addition to decreasing inflammation, the prostaglandins that are  
18 supported by COX-1 enzymes are involved in the production of gastric mucus; this protects the  
19 stomach wall from the hydrochloric acid present in the stomach. It is generally accepted in the  
20 medical community that by blocking the COX-1 enzyme, the body's ability to protect gastric  
21 tissue is hampered and as a result, can cause harmful gastrointestinal side effects, including  
22 stomach ulceration and bleeding.

23          18. Prostaglandin I2 is the predominant cyclooxygenase product in  
24 endothelium, inhibiting platelet aggregation (preventing clot formation), causing vasodilation,  
25 and preventing the proliferation of vascular smooth muscle. Whereas older NSAIDS inhibit  
26 Thromboxane A2 and Prostaglandin I2, the COX-2 inhibitors leave Thromboxane A2 unaffected.  
27 Thromboxane A2 is a potent platelet aggregator and vasoconstrictor, which is synthesized by  
28

1 platelets. Therefore, while the older NSAIDS suppress platelet aggregation and vasoconstriction,  
2 the COX-2 inhibitors support it.

3       19. Traditional NSAIDs like aspirin reduce pain/inflammation and therefore  
4 pain by inhibiting both COX-1 and COX-2 enzymes simultaneously. As would be expected,  
5 traditional NSAIDs may cause ulcers in the stomach. However, traditional NSAIDs do not cause  
6 blood clots, rather they actually reduce the risk of clots and help protect heart function.

7       20. Defendants and other pharmaceutical companies set out to remedy these  
8 ulcer and bleeding problems suffered by some NSAID users by developing “selective” inhibitors  
9 that would block only COX-2 production, thus (supposedly) allowing the proper maintenance of  
10 gastric tissue while still reducing inflammation.

11       21. In making this decision, Defendants and their predecessors in interest either  
12 intentionally ignored or recklessly disregarded current medical knowledge that selective COX-2  
13 inhibition lowers prostacyclin levels and causes thromboxane A<sub>2</sub> to be uninhibited, causing blood  
14 clots, and giving rise to various clot-related cardiovascular events, including heart attack, stroke,  
15 unstable angina. The vasoconstriction and fluid retention cause the hypertension.

16       22. Pfizer launched Celebrex, the first of the three major COX-2 inhibitor  
17 drugs, in early 1999 and initiated a massive marketing campaign to convince doctors and  
18 consumers of the superiority of their new “blockbuster” drug over less inexpensive NSAIDs. In  
19 May 1999, Merck & Co., Inc. (“Merck”) launched Vioxx, its own selective COX-2 inhibitor.

20       23. Seeking increased market share in this extremely lucrative market,  
21 Defendants, and their predecessors in interest, also sought approval of a “second generation”  
22 selective COX-2 inhibitor and filed for FDA approval of Bextra on January 16, 2001 for the  
23 (i) prevention and treatment of acute pain, (ii) treatment of primary dysmenorrhea, and (iii) relief  
24 of the signs and symptoms of osteoarthritis and adult rheumatoid arthritis.

25       24. The FDA granted approval of the new drug on November 16, 2001, for two  
26 particular uses: (i) treatment of primary dysmenorrhea and (ii) relief for the signs and symptoms  
27 of osteoarthritis and rheumatoid arthritis.

1           25. The FDA did not grant approval to market and promote Bextra for the  
2 management or prevention of acute pain.

3           26. The FDA did not grant approval to promote Bextra as more effective than  
4 other NSAIDs in preventing clinically serious gastrointestinal events such as perforations, ulcers  
5 or gastric bleeding.

6           27. Even without a label that allowed Defendants to legitimately claim superior  
7 safety, when Defendants, and their predecessors-in-interest, began marketing Bextra in early  
8 2002, Defendants and their representatives and agents misrepresented the safety profile of Bextra  
9 to consumers, including Plaintiff, the medical community, healthcare providers, and third party  
10 payers. Defendants proceeded to promote, market, sell, and distribute Bextra as a much safer and  
11 more effective pain reliever than other NSAIDs, such as aspirin, naproxen, and ibuprofen.

12           C. **Facts Regarding Bextra's Safety and Defendants' Knowledge Thereof.**

13           28. The potential for cardiovascular risk of selective COX-2 inhibitors was  
14 known to Defendants long before the FDA granted market approval in November 2, 2001. By  
15 1997, and prior to the submission of the New Drug Application (the "NDA") for Bextra,  
16 Defendants was aware that, by inhibiting COX-2, Bextra altered the homeostatic balance between  
17 prostacyclin synthesis and thromboxane and thereby, increased the prothrombotic effects of the  
18 drugs, causing blood clots to form in those who ingested it. *See Topol, E.J., et al., Risk of*  
19 *Cardiovascular Events Associated with Selective Cox-2 Inhibitors, JAMA, August 22, 2001 at*  
20 *954.* Although all COX-2 inhibitors have this mechanism of action, Bextra was the most  
21 selective COX-2 inhibitor proposed for approval. Accordingly, it had the greatest potential to  
22 cause adverse cardiovascular and cerebrovascular events.

23           29. As Pharmacologist, Dr. Garrett Fitzgerald, of the University of  
24 Pennsylvania, reported in an editorial published in *The New England Journal of Medicine* on  
25 October 21, 2004, that it was known as early as 1999 that selective COX-2 inhibitors, such as  
26 Bextra, suppressed the formation of prostaglandin I-2 in healthy volunteers, inhibited platelet  
27 aggregation in vitro, and may predispose patients to myocardial infarction or thrombotic stroke.

1           30. Nevertheless, on January 16, 2001, Defendants submitted an NDA to the  
2 FDA for Bextra, omitting information about the extent of the risks associated with Bextra.  
3 Without a complete picture of the potential hazards associated with the drug, the FDA approved  
4 Bextra on or about November 16, 2001.

5           31. Based on the studies performed on Celebrex, Vioxx, Bextra, and other  
6 COX-2 inhibitors, and basic research on this type of selective inhibitor which had been widely  
7 conducted, Defendants knew when Bextra was being developed and tested that selective COX-2  
8 inhibitors posed serious cardiovascular risks for anyone who took them, and presented a specific  
9 additional threat to anyone with existing heart disease or cardiovascular risk factors. Studies  
10 show that selective COX-2 inhibitors, including Bextra, decrease blood levels of a prostacyclin.  
11 When those levels fall, the arteries are more vulnerable to clotting, high blood pressure, heart  
12 attack, and stroke.

13           32. On December 9, 2004, the FDA issued new information on side effects  
14 associated with the use of Bextra and required the addition of certain warnings to, and the  
15 strengthening of other warnings on, the Bextra label. The enhanced warnings followed in the  
16 wake of the results of additional cardiovascular studies performed by Defendants, as well as  
17 numerous complaints to the FDA regarding severe skin reactions.

18           33. Yet well prior to this warning, Defendants had knowledge of the coronary  
19 and cardiovascular safety risks of Bextra from several studies. See e.g., Otto, E.O., *Efficacy and*  
20 *Safety of the Cyclooxygenase 2 Inhibitors Parecoxib and Valdecoxib in Patients Undergoing*  
21 *Coronary Artery Bypass Surgery, The Journal of Thoracic and Cardiovascular Surgery*, June  
22 2003 at 1481.

23           34. Even Defendants' own (and Pfizer funded) post- drug approval meta-  
24 analysis study (first presented on March 31, 2003 and again on May 15, 2003) included this data  
25 showing an increased cardiovascular risk in patients treated with Bextra after undergoing  
26 coronary artery bypass graft surgery. Observed events included heart attack, stroke, and blood  
27 clots in the legs and lungs. The results were particularly relevant and striking as each of the study  
28

1 participants who were a post-bypass surgery patient was taking anti-clotting agents at the time  
2 their exposure to Bextra was being tracked.

3       35. In mid-January 2005, a peer-reviewed paper from the University of  
4 Pennsylvania found that in patients having heart bypass surgery, those who took Bextra in the  
5 intravenous form, parecoxib, as opposed to a placebo, were three times more likely to have a  
6 heart attack or stroke.

7       36. From February 16-18, 2005, the FDA's Drug Safety and Risk Management  
8 Advisory Committee and the Arthritis Drug Advisory Committee met jointly to further examine  
9 the safety of COX-2 inhibitors. There, FDA Office of Drug Safety Officer David Graham  
10 testified that selective COX-2 inhibitors increase the risk for adverse cardiovascular events at  
11 about the same rate as cigarette smoking, hypertension, and diabetes.

12       37. Despite years of studies on selective COX-2 inhibitors, as well as the  
13 disturbing new studies specifically analyzing the risks of Bextra, Defendants failed to take any  
14 action to protect the health and welfare of patients, but instead, continued to promote the drug for  
15 sale even after the FDA's Drug Safety and Risk Management Advisory Committee and Arthritis  
16 Drug Advisory Committee meetings.

17       38. On April 7, 2005, the FDA finally insisted that Defendants "voluntarily  
18 withdraw" Bextra from the U.S. market, stating:

19                 " . . . the Agency has concluded that the overall risk versus benefit  
20 profile of Bextra is unfavorable. This conclusion is based on the  
21 potential increased risk for serious cardiovascular (CV) adverse  
22 events, which appears to be a class effect of non-steroidal anti-  
23 inflammatory drugs (NSAIDs) (excluding aspirin), an increased  
24 risk of serious skin reactions (e.g. toxic epidermal necrolysis,  
25 Stevens-Johnson syndrome, erythema multiforme) compared to  
26 other NSAIDs, and the fact that Bextra has not been shown to offer  
27 any unique advantage over the other available NSAIDs."

28       39. FDA Alert for Healthcare Professionals, April 7, 2005.  
Continuing, the FDA noted:

"Bextra has been demonstrated to be associated with an  
increased risk of serious adverse CV events in two short-term trials  
in patients immediately post-operative from coronary artery bypass  
graft (CABG) surgery . . . . FDA has concluded that it is reasonable

1 to extrapolate the adverse CV risk information for Bextra from the  
2 short-term CABG trials to chronic use given the fact that other  
3 COX-2 selective NSAIDs have been shown in long-term controlled  
4 clinical trials to be associated with an increased risk of serious  
5 adverse CV events (e.g., death, MI, stroke), and the well described  
6 risk of serious, and often life-threatening gastrointestinal  
7 bleeding . . . To date, there have been no studies that demonstrate  
8 an advantage of Bextra over other NSAIDs that might offset the  
9 concern about the[] serous skin risks, such as studies that show a GI  
10 safety benefit, better efficacy compared to other products, or  
11 efficacy in a setting of patients who are refractory to treatment with  
12 other products.”

13 40. The scientific data available during and after Bextra’s approval process  
14 made clear to Defendants that their formulation of Bextra would cause a higher risk of blood  
15 clots, stroke and/or myocardial infarctions among Bextra consumers, alerting them to the need to  
16 do additional and adequate safety studies.

17 41. As stated by Dr. Topol on October 21, 2004, in *The New England Journal*  
18 *of Medicine*, outlining Defendants’ failure to have conducted the necessary trials before  
19 marketing to humans “ . . . it is mandatory to conduct a trial specifically assessing cardiovascular  
20 risk and benefit of (COX-2 inhibitors). Such a trial needed to be conducted in patients with  
21 established coronary artery disease, who frequently have coexisting osteoarthritis requiring  
22 medication and have the highest risk of further cardiovascular events.”

23 42. Dr. Topol was also the author on the study published in August 2001 in  
24 JAMA (listed above) that reported an increased risk of thrombotic cardiovascular events in  
25 persons who used COX-2 inhibitors.

26 43. Based upon readily available scientific data, Defendants knew, or should  
27 have known, that their pre-approval testing of Bextra did not adequately represent the cross-  
28 section of individuals who were intended consumers and therefore, likely to take Bextra.  
Therefore, Defendants’ testing and studies were grossly inadequate. See, e.g., PDR entry for  
Bextra (noting that: “Platelets: In four clinical studies with young and elderly (>/=65 years)  
subjects, single and multiple doses up to 7 day mg BID had no effect on platelet aggregation”).

44. Had Defendants done adequate testing prior to approval and “market  
launch,” (rather than the extremely short duration studies done on the small size patient base that

1 was actually done) Pharmacia and Searle's scientific data would have revealed significant  
2 increases in incidence of strokes and myocardial infarctions among the intended and targeted  
3 population of Bextra consumers. Adequate testing would have shown that Bextra possessed  
4 serious side effects for individuals such as Plaintiff. Defendants should have taken appropriate  
5 measures to ensure that their defectively designed product would not be placed in the stream of  
6 commerce and/or should have provided full and proper warnings accurately and fully reflecting  
7 the scope and severity of symptoms of those side effects should have been made.

8       45. In fact, post-market approval data did reveal increased risks of clotting,  
9 stroke and myocardial infarction, but this information was intentionally suppressed by Defendants  
10 in order for them to gain significant profits from continued Bextra sales.

11       46. Defendants' failure to conduct adequate testing and/or additional testing  
12 prior to "market launch" was based upon their desire to generate maximum financial gains for  
13 themselves and to gain a significant market share in the lucrative multi-billion dollar COX-2  
14 inhibitor market.

15       47. At the time Defendants manufactured, advertised, and distributed Bextra to  
16 consumers, Defendants intentionally or recklessly ignored and/or withheld information regarding  
17 the increased risks of hypertension, stroke and/or myocardial infarctions because Defendants  
18 knew that if such increased risks were disclosed, consumers such as Plaintiff would not purchase  
19 Bextra, but instead would purchase other cheaper and safer NSAIDs.

20       **D. Facts Regarding Defendants' Marketing and Sale of Bextra**

21       48. At all times relevant herein, Defendants engaged in a marketing campaign  
22 with the intent that consumers would perceive Bextra as a safer and better drug than its other  
23 NSAIDs and, therefore, purchase Bextra.

24       49. Defendants widely and successfully marketed Bextra throughout the  
25 United States by, among other things, conducting promotional campaigns that misrepresented the  
26 efficacy of Bextra in order to induce a widespread use and consumption. Bextra was represented  
27 to aid the pain and discomfort of arthritis, osteoarthritis, and related problems. Defendants made  
28

1 misrepresentations by means of media advertisements, and statements contained in sales literature  
2 provided to Plaintiff's prescribing physicians.

3       50. Despite knowledge of the dangers presented by Bextra, Defendants and  
4 Defendants' predecessors in interest, through their officers, directors and managing agents for the  
5 purpose of increasing sales and enhancing its profits, knowingly and deliberately failed to remedy  
6 the known defects of Defendants' product, Bextra, and failed to warn the public, including  
7 Plaintiff, of the serious risk of injury occasioned by the defects inherent in Defendants' product,  
8 Bextra. Defendants and their officers, agents and managers intentionally proceeded with the  
9 inadequate safety testing, and then the manufacturing, sale and marketing of Defendants' product,  
10 Bextra, knowing that persons would be exposed to serious potential danger, in order to advance  
11 their own pecuniary interests. Defendants' conduct was wanton and willful, and displayed a  
12 conscious disregard for the safety of the public and particularly of Plaintiff.

13       51. In an elaborate and sophisticated manner, Defendants aggressively  
14 marketed Bextra directly to consumers and medical professionals (including physicians and  
15 leading medical scholars) in order to leverage pressure on third party payers, medical care  
16 organizations, and large institutional buyers (*e.g.*, hospitals) to include Bextra on their  
17 formularies. Faced with the increased demand for the drug by consumers and health care  
18 professionals that resulted from Defendants' successful advertising and marketing blitz, third  
19 party payers were compelled to add Bextra to their formularies. Defendants' marketing campaign  
20 specifically targeted third party payers, physicians, and consumers, and was designed to convince  
21 them of both the therapeutic and economic value of Bextra.

22       52. Defendants represented that Bextra was similar to ibuprofen and naproxen  
23 but was superior because it lacked any of the common gastrointestinal adverse side effects  
24 associated with these and other non-steroidal anti-inflammatory drugs ("NSAIDS"). For instance,  
25 NSAIDS can, in certain patients, cause gastrointestinal perforations, ulcers and bleeding with  
26 long-term use. Defendants promoted Bextra as a safe and effective alternative that would not  
27

1 have the same deleterious and painful impact on the gut, but that would be just as effective, if not  
2 more so, for pain relief.

3       53.      Bextra possessed dangerous and concealed or undisclosed side effects,  
4 including the increased risk of serious cardiovascular events, such as heart attacks, unstable  
5 angina, cardiac clotting, deep vein thrombosis, hypertension, and cerebrovascular events, such as  
6 strokes. In addition, Bextra was no more effective than traditional and less expensive NSAIDs  
7 and, just like traditional NSAIDs, carried a risk of perforations, ulcers, and gastrointestinal  
8 bleeding. Defendants chose not to warn about these risks and dangers.

9       54.      Defendants knew of these risks before the U.S. Food and Drug  
10 Administration (the “FDA”) approved Bextra for sale on November 16, 2001, but Defendants  
11 ignored, downplayed, suppressed, omitted, and concealed these serious safety risks and denied  
12 inefficacy in its promotion, advertising, marketing, and sale of Bextra. Defendants’ omission,  
13 suppression, and concealment of this important information enabled Bextra to be sold to, and  
14 purchased, or paid for by, the Consumers at a grossly inflated price.

15       55.      Consequently, Bextra captured a large market share of anti-inflammatory  
16 drugs prescribed for and used by patients. In 2002 alone (after a drug launch in March of 2002),  
17 sales of Bextra exceeded \$1.5 billion, despite the significantly higher cost of Bextra as compared  
18 to other pain relievers in the same family of drugs.

19       56.      It was not until April 7, 2005, that Defendants finally acknowledged  
20 Bextra’s deleterious side effects and announced that they were withdrawing the drug from the  
21 worldwide market based on what it misleadingly termed “new” and “unexpected” evidence  
22 linking Bextra to an increased risk of heart attacks and strokes.

23       57.      Had Defendants done adequate testing prior to approval and “market  
24 launch,” Pharmacia’s scientific data would have revealed significant increases in stroke and  
25 myocardial infarction amongst the intended population of BEXTRA consumers. Adequate  
26 testing would have shown that BEXTRA possessed serious side effects. Defendants should have  
27 taken appropriate measures to ensure that their defectively designed product would not be placed  
28

1 in the stream of commerce and/or should have provided full and proper warnings accurately and  
2 fully reflecting the scope and severity of symptoms of those side effects should have been made.  
3

4 58. In fact, post-market approval data did reveal increased risks of clotting,  
stroke and myocardial infarction, but this information was intentionally suppressed by Defendants  
5 in order for them to gain significant profits from continued BEXTRA sales.

6 59. Defendants' failure to conduct adequate testing and/or additional testing  
7 prior to "market launch" was based upon their desire to generate maximum financial gains for  
8 themselves and to gain a significant market share in the lucrative multi-billion dollar COX-2  
9 inhibitor market.

10 60. At the time Defendants manufactured, advertising, and distributed  
11 BEXTRA to consumers, Defendants intentionally or recklessly ignored and/or withheld  
12 information regarding the increased risks of hypertension, stroke and/or myocardial infarctions  
13 because Defendants knew that if such increased risks were disclosed, consumers such as plaintiff  
14 would not purchase BEXTRA, but instead would purchase other cheaper and safer NSAID drugs.

15 61. At all times relevant herein, Defendants engaged in a marketing campaign  
16 with the intent that consumers, including plaintiff, and their doctors would perceive BEXTRA as  
17 a better drug than its competitors and, therefore, purchase BEXTRA.

18 62. Defendants widely and successfully marketed BEXTRA throughout the  
19 United States by, among other things, conducting promotional campaigns that misrepresented the  
20 efficacy of BEXTRA in order to induce a widespread use and consumption. BEXTRA was  
21 represented to aid the pain and discomfort of arthritis, osteoarthritis, and related problems.  
22 Defendants made misrepresentations by means of media advertisements, and statements  
23 contained in sales literature provided to Plaintiff's prescribing physicians.

24 63. Prior to manufacturing, sale and distribution of BEXTRA, Defendants,  
25 through their officers, director and managing agents, had notice and knowledge from several  
26 sources, that BEXTRA presented substantial and unreasonable risks of harm to the consumer. As  
27

1 such, BEXTRA consumers, including Plaintiff, were unreasonably subject to risk of injury or  
2 death from the consumption of Defendants' product, BEXTRA.

3 Despite such knowledge, Defendants and Defendants' predecessors in interest, through their  
4 officers, directors and managing agents for the purpose of increasing sales and enhancing its  
5 profits, knowingly and deliberately failed to remedy the known defects of Defendants' product,  
6 BEXTRA, and failed to warn the public, including Plaintiff, of the serious risk of injury  
7 occasioned by the defects inherent in Defendants' product, BEXTRA. Defendants and their  
8 officers, agents and managers intentionally proceeded with the inadequate testing, and then the  
9 manufacturing, sale and marketing of Defendants' product, BEXTRA, knowing that persons  
10 would be exposed to serious potential danger, in order to advance their own pecuniary interests.  
11 Defendants' conduct was wanton and willful, and displayed a conscious disregard for the safety  
12 of the public and particularly of Plaintiff.

13

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF:**  
16 **Negligence**

17 64. Plaintiff incorporates by reference all of the paragraphs of this Complaint  
18 as if fully set forth herein.

19 65. Defendants owed Plaintiff a duty to exercise reasonable care when  
20 designing, manufacturing, marketing, advertising, distributing, and selling BEXTRA. This duty  
21 included the duty not to introduce a pharmaceutical drug, such as BEXTRA, into the stream of  
22 commerce that caused users to suffer from unreasonable, dangerous or untoward adverse side  
23 effects.

24 66. At all relevant times to this action, Defendants owed a duty to properly  
25 warn Plaintiff and the Public of the risks, dangers and adverse side effects of their pharmaceutical  
26 drug BEXTRA.

1           67. Defendants breached their duties by failing to exercise ordinary care in the  
2 preparation, design, research, testing, development, manufacturing, inspection, labeling,  
3 marketing, promotion, advertising and selling of BEXTRA, including:  
4

- 5                 a. failing to use due care in the preparation and development of  
6 BEXTRA to prevent the aforementioned risk of injuries to individuals when the drugs were  
7 ingested;
- 8                 b. failing to use due care in the design of BEXTRA to prevent the  
9 aforementioned risk of injuries to individuals when the drugs were ingested;
- 10                 c. failing to conduct adequate pre-clinical testing and research to  
determine the safety of BEXTRA;
- 11                 d. failing to conduct adequate post-marketing surveillance and  
exposure studies to determine the safety of BEXTRA;
- 12                 e. failing to completely, accurately and in a timely fashion, disclose  
the results of the pre-marketing testing and post-marketing surveillance and testing to Plaintiff,  
13 consumers, the medical community, and the FDA;
- 14                 f. failing to accompany BEXTRA with proper warnings regarding all  
possible adverse side effects associated with the use of BEXTRA;
- 15                 g. failing to use due care in the manufacture, inspection, and labeling  
of BEXTRA to prevent the aforementioned risk of injuries to individuals who used BEXTRA;
- 16                 h. failing to use due care in the promotion of BEXTRA to prevent the  
aforementioned risk of injuries to individuals when the drugs were ingested;
- 17                 i. failing to use due care in the sale and marketing of BEXTRA to  
prevent the aforementioned risk of injuries to individuals when the drugs were ingested;
- 18                 j. failing to use due care in the selling of BEXTRA to prevent the  
aforementioned risk of injuries to individuals when the drugs were ingested;
- 19                 k. failing to provide adequate and accurate training and information to  
the sales representatives who sold BEXTRA;

1                   1. failing to provide adequate and accurate training and information to  
2 healthcare providers for the appropriate use of BEXTRA; and

3                   m. being otherwise reckless, careless and/or negligent.

4                 68. Despite the fact that Defendants knew or should have known that  
5 BEXTRA caused unreasonable and dangerous side effects which many users would be unable to  
6 remedy by any means, Defendants continued to promote and market BEXTRA to consumers,  
7 including Plaintiff, when safer and more effective methods of pain relief were available.

8                 69. Defendants were, or should have been, had they exercised reasonable care,  
9 in possession of evidence demonstrating that BEXTRA caused serious side effects. Nevertheless,  
10 they continued to market their products by providing false and misleading information with  
11 regard to the safety and efficacy of BEXTRA.

12                70. Defendants knew or should have known that consumers such as Plaintiff  
13 would foreseeably suffer injury as a result of their failure to exercise ordinary care as described  
14 above.

15                71. As a direct and proximate consequence of Defendants' acts, omissions, and  
16 misrepresentations described herein, the Plaintiff sustained serious cardiovascular injuries  
17 including a major heart attack. Plaintiff required healthcare and services incurring direct medical  
18 losses and costs including care for hospitalization, physician care, monitoring, treatment,  
19 medications, and supplies.

20                72. Defendants' conduct was committed with knowing, conscious, wanton,  
21 willful, and deliberate disregard for the value of human life and the rights and safety of  
22 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so  
23 as to punish Defendants and deter them from similar conduct in the future.

24                73. WHEREFORE, Plaintiff demands judgment against Defendants and seeks  
25 compensatory damages, and exemplary and punitive damages together with interest, the costs of  
26 suit and attorneys' fees and such other and further relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF:**  
**Strict Liability**

74. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein and further alleged as follows:

75. At all times relevant to this action, Defendants were suppliers of BEXTRA, placing the drug into the stream of commerce. BEXTRA was expected to and did reach Plaintiff without substantial change in the condition in which it was manufactured and sold.

76. BEXTRA was unsafe for normal or reasonably anticipated use.

77. BEXTRA was defective in design or formulation because when it left the hands of the manufacturer and/or supplier, it was unreasonably dangerous and more dangerous than an ordinary consumer would expect. BEXTRA was also defective and unreasonably dangerous in that the foreseeable risk of injuries from BEXTRA exceeded the benefits associated with the design and/or formulation of the product.

78. Bextra is unreasonably dangerous: a) in construction or composition; b) in design; c) because an adequate warning about the product was not provided; and d) because it does not conform to an express warranty of the manufacturer about the product.

79. The characteristics of Bextra that render it unreasonably dangerous existed at the time the product left the control of the manufacturer or resulted from a reasonably anticipated alteration or modification of the product.

80. The BEXTRA manufactured and supplied by Defendants was also defective due to inadequate warnings, and/or inadequate clinical trials, testing and study, and inadequate reporting regarding the results of the clinical trials, testing and study. Defendants failed to perform adequate testing before exposing Plaintiff to the medication, testing which would have shown that BEXTRA had the potential to cause serious side effects including heart attacks like that which affected Plaintiff.

81. The BEXTRA manufactured and supplied by Defendants was defective due to inadequate post-marketing warnings or instructions because, after Defendants knew or should have known of the risk of injuries from BEXTRA, they failed to provide adequate

1 warnings to the medical community and the consumers, to whom they were directly marketing  
2 and advertising BEXTRA; and, further, it continued to affirmatively promote BEXTRA as safe  
3 and effective.

4       82.      BEXTRA was manufactured, distributed, tested, sold, marketed, advertised  
5 and promoted defectively by Defendants, and as a direct and proximate cause of Defendants'  
6 defective design of BEXTRA, Plaintiff used BEXTRA rather than other safer and cheaper  
7 NSAIDs. As a result, Plaintiff suffered the personal injuries described above.

8       83.      Information given by Defendants to the medical community and to the  
9 consumers concerning the safety and efficacy of BEXTRA, especially the information contained  
10 in the advertising and promotional materials, did not accurately reflect the potential side effects of  
11 BEXTRA.

12       84.      Had adequate warnings and instructions been provided, Plaintiff would not  
13 have taken BEXTRA as did, and would not have been at risk of the harmful side effects  
14 described herein.

15       85.      Defendants acted with conscious and deliberate disregard of the  
16 foreseeable harm caused by BEXTRA.

17       86.      Plaintiff could not, through the exercise of reasonable care, have  
18 discovered BEXTRA's defects or perceived the dangers posed by the drug.

19       87.      As a direct and proximate consequence of Defendants' acts, omissions, and  
20 misrepresentations described herein, the Plaintiff sustained serious cardiovascular injuries.  
21 Plaintiff required healthcare and services incurring direct medical losses and costs including care  
22 for hospitalization, physician care, monitoring, treatment, medications, and supplies.

23       88.      Defendants' conduct was committed with knowing, conscious, wanton,  
24 willful, and deliberate disregard for the value of human life and the rights and safety of  
25 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so  
26 as to punish Defendants and deter them from similar conduct in the future.

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89. WHEREFORE, Plaintiff demands judgment against Defendants and seeks compensatory damages, and punitive and exemplary damages together with interest, the costs of suit and attorneys' fees and such other and further relief as this Court deems just and proper.

**THIRD CLAIM FOR RELIEF:**  
**Breach of Express Warranty**

90. Plaintiff incorporates by reference all of the paragraphs of this Complaint as if fully set forth herein.

91. Defendants expressly represented to Plaintiff and other consumers and the medical community that BEXTRA was safe and fit for its intended purposes, that it was of merchantable quality, that it did not produce any dangerous side effects, particularly any unwarmed-of side effects, and that it was adequately tested.

92. These warranties came in the form of:

93. a. Defendants' public written and verbal assurances of the safety and efficacy of BEXTRA;

94. b. Press releases, interviews and dissemination via the media of promotional information, the sole purpose of which was to create an increased demand for BEXTRA, which failed to warn of the risk of injuries inherent to the ingestion of BEXTRA, especially to the long-term ingestion of BEXTRA;

95. c. Verbal and written assurances made by Defendants regarding BEXTRA and downplaying the risk of injuries associated with the drug;

96. d. False and misleading written information, supplied by Defendants, and published in the Physician's Desk Reference on an annual basis, upon which physicians relied in prescribing BEXTRA during the period of Plaintiff's ingestion of BEXTRA, and;

97. e. advertisements.

98. 93. The documents referred to above were created by and at the direction of Defendants.

1           94. Defendants knew or had reason to know that BEXTRA did not conform to  
2 these express representations in that BEXTRA is neither as safe nor as effective as represented,  
3 and that BEXTRA produces serious adverse side effects.

4           95. BEXTRA did not and does not conform to Defendants' express  
5 representations because it is not safe, has numerous and serious side effects, including unwarned-  
6 of side effects, and causes severe and permanent injuries.

7           96. Plaintiff, other consumers, and the medical community relied upon  
8 Defendants' express warranties.

9           97. As a direct and proximate consequence of Defendants' acts, omissions, and  
10 misrepresentations described herein, the Plaintiff sustained serious cardiovascular injuries.  
11 Plaintiff required healthcare and services incurring direct medical losses and costs including care  
12 for hospitalization, physician care, monitoring, treatment, medications, and supplies.

13           98. Defendants' conduct was committed with knowing, conscious, wanton,  
14 willful, and deliberate disregard for the value of human life and the rights and safety of  
15 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so  
16 as to punish Defendants and deter them from similar conduct in the future.

17           99. WHEREFORE, Plaintiff demands judgment against Defendants and seeks  
18 compensatory damages, and punitive and exemplary damages together with interest, the costs of  
19 suit and attorneys' fees and such other and further relief as this Court deems just and proper.

21           **FOURTH CLAIM FOR RELIEF:**  
22           **Breach of Implied Warranty**

23           100. Plaintiff incorporates by reference all of the paragraphs of this Complaint  
as if fully set forth herein.

24           101. Defendants manufactured, distributed, advertised, promoted, and sold  
25 BEXTRA.

1           102. At all relevant times, Defendants knew of the use for which BEXTRA was  
2 intended and impliedly warranted the product to be of merchantable quality and safe and fit for  
3 such use.

4           103. Defendants were aware that consumers, including Plaintiff, would use  
5 BEXTRA for treatment of pain and inflammation and for other purposes.

6           104. Plaintiff and the medical community reasonably relied upon Defendants'  
7 judgment and expertise to only sell them or allow them to prescribe BEXTRA only if it was  
8 indeed of merchantable quality and safe and fit for its intended use. Consumers, including  
9 Plaintiff, and the medical community, reasonably relied upon Defendants' implied warranty for  
10 BEXTRA.

11           105. BEXTRA reached consumers, including Plaintiff, without substantial  
12 change in the condition in which it was manufactured and sold by Defendants.

13           106. Defendants breached their implied warranty to consumers, including  
14 Plaintiff; BEXTRA was not of merchantable quality or safe and fit for its intended use.

15           107. As a direct and proximate consequence of Defendants' acts, omissions, and  
16 misrepresentations described herein, the Plaintiff sustained serious cardiovascular injuries.  
17 Plaintiff required healthcare and services incurring direct medical losses and costs including care  
18 for hospitalization, physician care, monitoring, treatment, medications, and supplies.

19           108. Defendants' conduct was committed with knowing, conscious, wanton,  
20 willful, and deliberate disregard for the value of human life and the rights and safety of  
21 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so  
22 as to punish Defendants and deter them from similar conduct in the future.

23           109. WHEREFORE, Plaintiff demands judgment against Defendants and seeks  
24 compensatory damages and punitive and exemplary damages together with interest, the costs of  
25 suit and attorneys' fees, and such other and further relief as this Court deems just and proper.

**FIFTH CLAIM FOR RELIEF:**  
**Fraudulent Misrepresentation & Concealment**

110. Plaintiff incorporates by reference all of the paragraphs of this Complaint as if fully set forth herein.

111. Defendants' superior knowledge and expertise, their relationship of trust and confidence with doctors and the public, their specific knowledge regarding the risks and dangers of BEXTRA, and their intentional dissemination of promotional and marketing information about BEXTRA for the purpose of maximizing its sales, each gave rise to the affirmative duty to meaningfully disclose and provide all material information about BEXTRA's risks and harms to doctors and consumers.

112. Defendants made fraudulent affirmative misrepresentations with respect to BEXTRA in the following particulars:

f. Defendants represented through their labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that BEXTRA had been tested and found to be safe and effective for the treatment of pain and inflammation; and

g. Defendants represented that BEXTRA was safer than other alternative medications.

113. Defendants made affirmative misrepresentations; and fraudulently, intentionally and/or recklessly concealed material adverse information regarding the safety and effectiveness of BEXTRA.

114. Defendants made these misrepresentations and actively concealed adverse information at a time when Defendants knew or had reason to know that BEXTRA had defects and was unreasonably dangerous and was not what Defendants had represented to the medical community, the FDA and the consuming public, including Plaintiff.

115. Defendants omitted, suppressed and/or concealed material facts concerning the dangers and risk of injuries associated with the use of BEXTRA including, but not limited to, the cardiovascular, cerebrovascular, and other serious health risks. Furthermore, Defendants'

1 purpose was willfully blind to, ignored, downplayed, avoided, and/or otherwise understated the  
2 serious nature of the risks associated with the use of BEXTRA in order to increase its sales.  
3

4       116. The representations and concealment were undertaken by Defendants with  
5 an intent that doctors and patients, including Plaintiff, rely upon them.  
6

7       117. Defendants' representations and concealments were undertaken with the  
8 intent of defrauding and deceiving Plaintiff, other consumers, and the medical community to  
9 induce and encourage the sale of BEXTRA.  
10

11       118. Defendants' fraudulent representations evinced their callous, reckless,  
12 willful, and depraved indifference to the health, safety, and welfare of consumers, including  
13 Plaintiff.  
14

15       119. Plaintiff's physician and Plaintiff relied on and were induced by  
16 Defendants' misrepresentations, omissions, and/or active concealment of the dangers of  
17 BEXTRA in selecting BEXTRA treatment.  
18

19       120. Plaintiff and the treating medical community did not know that the  
20 representations were false and were justified in relying upon Defendants' representations.  
21

22       121. Had Plaintiff been aware of the increased risk of side effects associated  
23 with BEXTRA and the relative efficacy of BEXTRA compared with other readily available  
24 medications, Plaintiff would not have taken BEXTRA as did.  
25

26       122. As a direct and proximate consequence of Defendants' acts, omissions, and  
27 misrepresentations described herein, the Plaintiff sustained serious cardiovascular injuries.  
28 Plaintiff required healthcare and services incurring direct medical losses and costs including care  
for hospitalization, physician care, monitoring, treatment, medications, and supplies.

1       123. Defendants' conduct was committed with knowing, conscious, wanton,  
2 willful, and deliberate disregard for the value of human life and the rights and safety of  
3 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so  
4 as to punish Defendants and deter them from similar conduct in the future.  
5

124. WHEREFORE, Plaintiff demands judgment against Defendants and seeks compensatory damages, and punitive and exemplary damages together with interest, the costs of suit and attorneys' fees, and such other and further relief as this Court deems just and proper.

**SIXTH CLAIM FOR RELIEF**  
**(Unjust Enrichment)**

125. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth herein.

126. At all times relevant to this action, Defendants were the manufacturers, sellers, and/or suppliers of BEXTRA.

127. Plaintiff paid for BEXTRA for the purpose of managing pain safely and effectively.

128. Defendants have accepted payment from Plaintiff for the purchase of  
**BEXTRA.**

129. Plaintiff did not received the safe and effective pharmaceutical product for which paid.

130. It is inequitable and unjust for Defendants to retain this money because the Plaintiff did not in fact receive the product Defendant represented BEXTRA to be.

131. WHEREFORE, Plaintiff demands judgment against Defendants and seeks equitable relief, the costs of suit and attorneys' fees, and such other and further relief as this Court deems just and proper.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

132. General damages in excess of the jurisdictional amount of this Court;
133. Consequential damages;
134. Disgorgement of profits;

1           135. Restitution;  
2           136. Punitive and exemplary damages;  
3           137. Pre-judgment and post-judgment interest as provided by law;  
4           138. Recovery of Plaintiff's costs including, but not limited to, discretionary  
5 Court costs of these causes, and those costs available under the law, as well as expert fees and  
6 attorneys' fees and expenses, and costs of this action; and  
7           139. Such other and further relief as the Court deems just and proper.  
8

9 Dated: April 4, 2008

Respectfully submitted,

10           ARMSTRONG & GUY LAW OFFICES, LLC

11           By:   
12           PAUL E. GUY, JR.

13           Paul E. Guy, Jr., MS Bar #10587  
14           Nancy Guy Armstrong, MS Bar #10277  
15           ARMSTRONG & GUY LAW OFFICES, LLC  
16           626 Delaware Ave.  
17           M'Comb, MS 39648  
18           Telephone: (601) 684-8816  
19           Facsimile: (601) 684-7992  
20           <paulguy@cableone.net>

21           Michael J. Miller, VA Bar No. 19171  
22           David C. Andersen, CA Bar No. 194095  
23           THE MILLER FIRM, LLC  
24           108 Railroad Ave.,  
25           Orange, Virginia 22960  
26           Telephone: (540) 672-4224  
27           Facsimile: (540) 672-3055

28           Attorneys for Plaintiff

1                           **DEMAND FOR JURY TRIAL**  
2

3  
4                           Plaintiff demands a trial by jury on all claims so triable in this action.  
5

6                           Dated: April 4, 2008  
7

8                           Respectfully submitted,  
9

10                          ARMSTRONG & GUY LAW OFFICES, LLC  
11

12                          By:   
13                          PAUL E. GUY, JR.  
14

15                          Paul E. Guy, Jr., MS Bar No. 10587  
16                          Nancy Guy Armstrong, MS Bar No. 10277  
17                          ARMSTRONG & GUY LAW OFFICES, LLC  
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24                          Michael J. Miller, VA Bar No. 19171  
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29                          Telephone: (540) 672-4224  
30                          Facsimile: (540) 672-3055  
31

32                          Attorneys for Plaintiff  
33

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Tomas M. Bandaries

(b) County of Residence of First Listed Plaintiff Lincoln  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul E. Guy, Jr., Armstrong &amp; Guy Law Offices, LLC, 626 Delaware Ave., McComb, MS 39648 (601) 684-8816

## DEFENDANTS

Pfizer Inc., Pharmacia Corporation, and G.D. Searle, LLC

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

APR - 7 2008

1 T. NOBLIN, CLERK

DEPUTY

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORECLOSURE/TENANCY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

## V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:  
Medical device products liability

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  NoVIII. RELATED CASE(S)  
IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/04/2008

SIGNATURE OF ATTORNEY OF RECORD

*Paul E. Guy Jr.*

FOR OFFICE USE ONLY

RECEIPT #

004633

AMOUNT \$350.00

APPLYING IPP

JUDGE

MAG. JUDGE